

## **Exhibit 2**

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1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

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4 UNITED STATES OF AMERICA, )  
5 Plaintiff, ) Case No. 2:16-cr-046-GMN-PAL  
6 vs. )  
7 CLIVEN D. BUNDY (1), ) Las Vegas, Nevada  
RYAN C. BUNDY (2), ) Monday, January 8, 2018  
8 AMMON E. BUNDY (3), ) Courtroom 7C, 9:28 a.m.  
RYAN W. PAYNE (4), ) MOTION TO DISMISS  
9 Defendants. )  
10 ) C E R T I F I E D   C O P Y

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12 TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE GLORIA M. NAVARRO  
13 UNITED STATES DISTRICT CHIEF JUDGE

14 APPEARANCES:

15 For the Plaintiff:

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21 (Appearances continued on Page 2)

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25 Proceedings reported by machine shorthand, transcript produced  
by computer-aided transcription.

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1       APPEARANCES CONTINUED:

2       For Intervenors LVRJ and Battle Born Media:

3                  McLETCHIE SHELL LLC  
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8       Also present:

9                  Sharon Gavin, FBI Special Agent  
10                 Joel Willis, FBI Special Agent  
11                 Mike Abercrombie, FBI Special Agent

12                 Mamie Ott, Legal Assistant

13                 Nicole Reitz, IT  
14                 Brian Glynn, IT

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1 LAS VEGAS, NEVADA; MONDAY, JANUARY 8, 2018; 9:28 A.M.

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3 P R O C E E D I N G S

4 COURTROOM ADMINISTRATOR: All rise.

5 THE COURT: Thank you. You may be seated.

6 COURTROOM ADMINISTRATOR: This is the time set for  
7 the Motion Hearing regarding Documents No. 2883 and 2906,  
8 sealed Motions to Dismiss and Document No. 3010, Motion to  
9 Unseal Intervenors -- by Intervenors in Case Number  
10 2:16-cr-046-GMN-PAL, United States of America vs. Cliven Bundy,  
11 Ryan Bundy, Ammon Bundy, and Ryan Payne.

12 Counsel, please make your appearances for the record.

13 MR. MYHRE: Good morning, Your Honor. Steve Myhre,  
14 Dan Schiess, Nadia Ahmed on behalf of the United States.

15 THE COURT: Good morning, Mr. Schiess. Good morning,  
16 Ms. Ahmed, and good morning, Mr. Myhre.

17 MR. WHIPPLE: Good morning, Your Honor.

18 Brett Whipple -- as well Happy New Year to you. Brett Whipple  
19 on behalf of Mr. Cliven Bundy.

20 THE COURT: Good morning, Mr. Whipple, Mr. Bundy.

21 PRO SE RYAN BUNDY: Ryan C. of the Bundy family here  
22 by special appearance with Maysoun Fletcher assisting and on --  
23 and for the record, I reserve all right.

24 THE COURT: Good morning, Mr. Bundy. Good morning,  
25 Ms. Fletcher.

1 MR. HILL: Good morning and Happy New Year,  
2 Your Honor. Dan Hill along with Morgan Philpot here on behalf  
3 of Ammon Bundy.

4 THE COURT: Good morning, Mr. Hill, Mr. Philpot and  
5 Mr. Bundy.

6 MS. WEKSLER: Good morning, Your Honor.

7 Brenda Weksler and Ryan Norwood on behalf of Mr. Payne.

8 THE COURT: Good morning, Ms. Weksler, Mr. Norwood,  
9 and good morning, Mr. Payne.

10 So before we begin, I would like to make some  
11 preliminary remarks just to --

12 MS. McLETCHIE: Good morning, Your Honor.

13 Maggie McLetchie --

14 THE COURT: Oh, I'm sorry.

15 MS. McLETCHIE: -- for the Intervenors Las Vegas  
16 Review Journal and Battle Born Media.

17 THE COURT: Thank you. Good morning, Ms. McLetchie.

18 All right. So before we begin, I just wanted to make  
19 some preliminary remarks to remind everyone and to set clear  
20 the expectations of how court will be conducted this morning.

21 Please remember this is a courtroom; it is not a  
22 sporting event. So it is never appropriate to make any  
23 expression of your opinion, whether verbally or through your  
24 body language, no matter how much you may agree or disagree  
25 with what is being said.

1           In addition, we do not allow electronic devices in  
2 the courtroom. There is no audio or video recording permitted  
3 in the courtroom. Therefore, only the attorneys are permitted  
4 to have electronic devices so that they may be able to do their  
5 job. There is one paralegal -- I think I see him back there --  
6 who is permitted to have an electronic device so long as the  
7 audio and speaker is covered.

8           Do you have that with you today, sir?

9           UNIDENTIFIED SPEAKER: I kept it in my briefcase,  
10 Your Honor.

11           THE COURT: Okay. Thank you, sir.

12           So please be aware that the marshals are authorized  
13 to remove any individual who is seen with an electronic device,  
14 whether it's on or off. Whether it's in vibrate or privacy  
15 mode, does not matter. If you have the device, they will be  
16 able to remove you and you may not be able to re-enter.  
17 Likewise, if you make any distracting or inappropriate  
18 expressions, the marshals also have the authority to remove you  
19 in order to preserve the atmosphere in the courtroom.

20           Now, the Court has reviewed the following briefs:  
21 Number 83 -- I'm sorry -- 2883 is the sealed version. The  
22 public version is 3057. The Court has also reviewed Docket No.  
23 2906. The public version of that is 3058. And the Court has  
24 also reviewed Documents 3082 and 3085. The public versions of  
25 those documents are 3087 and 3088.

1           The Court does grant Cliven Bundy's Motion for  
2 Joinder, which is Number 3096.

3           Now, in Payne's Motion to Dismiss, Mr. Payne's Motion  
4 to Dismiss, which is Number 3085, he does request that the  
5 Indictment be dismissed based on three possible theories:

6           The first being that the case barred by the double  
7 jeopardy clause; the second being that outrageous government  
8 conduct that amounts to a due process violation justifies  
9 dismissal; and the third theory is that dismissal under the  
10 Court's supervisory power for outrageous governmental  
11 misconduct is appropriate.

12           The Court first will address the double jeopardy  
13 argument.

14           Double jeopardy does attach once a jury has been  
15 sworn. Pursuant to *United States v. Alexander*, Ninth Circuit  
16 case decided in 1998, "If a case is dismissed after jeopardy  
17 attaches but before the jury reaches a verdict, a defendant may  
18 be tried again for the same crime only in two circumstances:  
19 Number one, if he consents to the dismissal, or number two, if  
20 the district court determines that the dismissal was required  
21 by manifest necessity," quoting from *Chapman*, Ninth Circuit  
22 case decided in 2008 as well as *Oregon v. Kennedy*, United  
23 States Supreme Court case decided in 1982. Here, the Court has  
24 already granted the mistrial based on manifest necessity so it  
25 follows that the defendants may be retried under this theory.

1           However, defendant Payne argues that the Double  
2 Jeopardy Clause still bars retrial "where the government  
3 conduct in question is intended to 'goad' the defendant into  
4 moving for a mistrial," quoting *Oregon v. Kennedy*. Considering  
5 what has occurred throughout the trial up to this point, the  
6 Court finds no evidence that the government's failure to  
7 disclose evidence was a strategy decision on the prosecution's  
8 part to abort the trial. Rather, it appears the government has  
9 attempted to provide the defense with the identified *Brady*  
10 evidence in order to move forward with trial and not to  
11 purposely goad the defense into moving for mistrial.

12           For these reasons, the Court finds the Double  
13 Jeopardy Clause does not bar retrial.

14           Next we have the claim of outrageous government  
15 conduct and that a dismissal is appropriate for either --  
16 either under a due process violation theory or under the  
17 Court's supervisory powers.

18           "A district court may dismiss an Indictment on the  
19 ground of outrageous government conduct if the conduct amounts  
20 to due process violation," quoting from *Simpson*, Ninth Circuit  
21 case. If the conduct does not rise to the level of a due  
22 process violation, the Court may nonetheless dismiss a case for  
23 outrageous government misconduct under its supervisory powers.

24           So turning first to the due process violation  
25 allegation.

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1           To violate due process, governmental conduct must be,  
2 and I quote, "so grossly shocking and so outrageous as to  
3 violate the universal sense of justice," quoting from *United*  
4 *States v. Restrepo*, Ninth Circuit case decided in '91, and also  
5 *United States vs. Ramirez*, Supreme Court case decided in 1983.

6           Due process is not violated unless the conduct is  
7 attributable to and directed by the government, *United States*  
8 *v. Barrera-Moreno*, Ninth Circuit case decided in 1991.

9           "Outrageous government conduct occurs when the  
10 actions of law enforcement officers or informants are so  
11 outrageous that due process principles would absolutely bar the  
12 government from invoking judicial processes to obtain a  
13 conviction," *United States v. Archie*, which is 2016 case out of  
14 the District of Nevada as well as *United States v. Black*, Ninth  
15 Circuit case decided in 2013 and *United States v. Russell*, U.S.  
16 Supreme Court case decided in 1973.

17           Now, dismissal under this "extremely high" standard  
18 is appropriate only in "extreme cases in which the government's  
19 conduct violates fundamental fairness," *U.S. v. Pedrin*,  
20 P-e-d-r-i-n, Ninth Circuit case decided in 2015 quoting from  
21 *United States v. Smith*, Ninth Circuit decided in 1991.

22           So when reviewing a claim alleging that the  
23 Indictment should be dismissed because the government's conduct  
24 was outrageous, evidence is viewed in the light most favorable  
25 to the government, *United States v. Gurolla*, G-u-r-o-l-l-a,

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1 Ninth Circuit case decided 2003.

2 The concept of outrageous government conduct focuses  
3 on the government's actions, *United States v. Restrepo*.

4 Here in this case, both the prosecution and the  
5 investigative agencies are equally responsible for the failure  
6 to produce *Brady* materials to the defense. In the prior  
7 mistrial hearing, the Court explained, in detail, that numerous  
8 documents, and the information contained in such documents,  
9 should have been provided to the defense and the Court finds  
10 this conduct especially egregious because the government chose  
11 not to provide this evidence, even after the defense  
12 specifically requested it.

13 The Court finds the prosecution's representations  
14 that it was unaware of the materiality of the *Brady* evidence is  
15 grossly shocking. The prosecution was on notice after the  
16 Court's order, which is on the docket, Number 2770, that a  
17 self-defense theory may become relevant if the defense was able  
18 to provide an offer of proof, outside the presence of the jury.  
19 Moreover, in that same order, Number 2770, the Court  
20 specifically denied the government's motion to exclude all the  
21 reference to perceived government misconduct to the extent it  
22 is relevant to defenses raised by the defendants. So the  
23 government was well aware that theories of self-defense,  
24 provocation, and intimidation might become relevant if the  
25 defense could provide a sufficient offer of proof to the Court.

1       However, the prosecution denied the defense its opportunity to  
2 provide favorable evidence to support their theories as a  
3 result of the government's withholding of evidence and this  
4 amounts to a *Brady* violation.

5                  For example, the government claims it failed to  
6 disclose this evidence because the FBI did not provide the  
7 documents to the prosecution team. However, the prosecutor has  
8 a duty to learn of favorable evidence known to other government  
9 agents, including the police, if those persons were involved in  
10 the investigation or prosecution of the case, citing *Kyles v.*  
11 *Whitley*, United States Supreme Court case decided 1995.  
12 Clearly, the FBI was involved in the prosecution of this case.  
13 Based on the prosecution's failure to look for evidence outside  
14 of that provided by the FBI and the FBI's failure to provide  
15 evidence that is potentially exculpatory to the prosecution for  
16 discovery purposes, the Court finds that a universal sense of  
17 justice has been violated. The Court is convinced that there  
18 is still outstanding *Brady* discovery based on the government's  
19 most recent assertion that, and I quote, "the government  
20 expects a thorough review of the discovery will result in the  
21 production of other documents to the defense," and I'm citing  
22 from the most recent filing by the government, Number 3081,  
23 Page 45, Footnote 20.

24                  Alternatively, a district court may exercise its  
25 supervisory powers in three different enumerated ways:

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1               Number one, "to remedy unconstitutional or statutory  
2 violation"; number two, "to protect judicial integrity by  
3 ensuring that a conviction rests on appropriate considerations  
4 validly before a jury"; or number three, "to deter future  
5 illegal conduct," quoting from *Simpson*, Ninth Circuit case  
6 decided '91.

7               In *United States vs. W. R. Grace*, the Ninth Circuit  
8 clarified that the exercise of the Court's inherent powers is  
9 not limited to these three grounds enumerated in *Simpson*, and  
10 that was an en banc decision by the Ninth Circuit in 2008.

11               "Dismissal is appropriate when the investigatory or  
12 prosecutorial process has violated a federal Constitution or  
13 statutory right and no lesser remedial action is available,"  
14 quoting from *Barrera-Moreno*.

15               The Ninth Circuit has recognized that exercise of a  
16 supervisory power is an appropriate means of policing ethical  
17 misconduct by prosecutors, *United States v. Lopez*, Ninth  
18 Circuit case decided in 1993.

19               So "dismissal under the Court's supervisory powers  
20 for prosecutorial misconduct requires both:

21               "Number one, flagrant misbehavior, and number two,  
22 substantial prejudice," citing *United States v. Kearns*,  
23 K-e-a-r-n-s, Ninth Circuit case decided in 1993.

24               Neither accidental nor mere negligent governmental  
25 conduct is sufficient. The idea of prejudice entails that the

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1 government's conduct had at least some impact on the verdict  
2 and thus redounded to the defendant's prejudice.

3 In order for the Court to dismiss an Indictment under  
4 the supervisory powers, the Court must find that there has been  
5 flagrant prosecutorial misconduct, substantial prejudice to the  
6 defendants, and that no lesser remedial action is available.

7 The Court found previously that there had been  
8 multiple *Brady* violations because the government failed to  
9 produce evidence that bolstered the defense and was useful to  
10 rebut the government's theory. Additionally, the Court  
11 concluded that the government willfully failed to disclose  
12 potentially exculpatory, favorable and material information,  
13 including, but not limited to, the following documents and  
14 their contents:

15 The FBI Law Enforcement Operation order; the FBI  
16 Burke 302 about Agent Egbert; the FBI 302 about BLM Agent  
17 Delmolino authored by FBI Agent Willis; the FBI 302 about BLM  
18 Special Agent Felix observing the LP/OP, the Listening  
19 Post/Operation Post; the FBI 302 about BLM Racker and his  
20 assignment to the LP/OP; the unredacted FBI TOC log; and the  
21 various threat assessments created by different agencies,  
22 including the BLM and FBI.

23 It seems no coincidence that most, if not all, of  
24 these documents are authored by the FBI.

25 I do need to make one correction. Apparently I

1 previously identified -- or should I say misidentified -- a  
2 report or some information as being contained in an Internal  
3 Affairs report. It was actually in the FBI Joint Terrorism  
4 Task Force report, the JTTF prepared on March 14th of 2014.  
5 This is the document that recorded that at a meeting Love had  
6 stated that he had requested that the FBI place a surveillance  
7 camera.

8 So the Court looks to *Chapman, U.S. v. Chapman*. And  
9 in *Chapman*, the district court dismissed an Indictment pursuant  
10 to its supervisory powers based on discovery violations that  
11 involved 650 pages of undisclosed documents that the Court  
12 classified as *Brady* material. The district court in *Chapman*  
13 found that "the Assistant U.S. Attorney acted flagrantly,  
14 willfully and in bad faith" and that he had made "affirmative  
15 misrepresentations to the Court," that the defendants would be  
16 prejudiced by a new trial and that no lesser standard would  
17 adequately remedy the harm done after reviewing the totality of  
18 the proceedings before it.

19 The Ninth Circuit held that the *Chapman* court did not  
20 abuse its discretion by dismissing the Indictment pursuant to  
21 its supervisory powers.

22 Here, defendant Payne argues that the government's  
23 conduct was more egregious than the facts before the *Chapman*  
24 court. He argues that there were more than mere hints of the  
25 discovery issues on the eve of trial and that there was at

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1       least a thousand pages of discovery disclosed between  
2       November 8th and December 15th of 2017, all which should have  
3       been disclosed by October 1st.

4                  The government argues that this case is different  
5       from the *Chapman* case because here the prosecution did not fail  
6       to produce evidence it knew to be material. The government  
7       contends it merely inadvertently failed to disclose evidence,  
8       or that the defense had all the information in the undisclosed  
9       documents because the government had previously provided other  
10      documents with substantially the same content. Further, the  
11      government contends that the documents that the Court ruled to  
12      be untimely disclosed, in violation of *Brady*, not including the  
13      OIG reports, is actually fewer than 200 pages.

14                 "The prosecutor has a 'sworn duty' to assure that the  
15       defendant has a fair and impartial trial. His interest in a  
16       particular case is not necessarily to win, but to do justice,"  
17       citing from *Chapman*. Here, the prosecution seems to have  
18       minimized the extent of prosecutorial misconduct by arguing  
19       that they believed the various items previously undisclosed,  
20       like the threat assessments, were not helpful or exculpatory,  
21       or that they did not need to be -- or that they did not provide  
22       evidence that snipers had been inserted or did not need to,  
23       because the use of snipers was already known to the defense.  
24       Another argument is that the FBI did not provide the  
25       information to the prosecution.

1                 The Court acknowledges that merely negligent  
2 government conduct is not sufficient to establish flagrant  
3 misbehavior. However, as the appellate court in *Chapman*  
4 stated, "we never suggested that flagrant misbehavior does not  
5 embrace reckless disregard for the prosecution's constitutional  
6 obligations." In other words, reckless disregard may amount to  
7 flagrant misbehavior. As the Court has noted, a prosecutor has  
8 an ongoing duty to learn of favorable evidence known to other  
9 government agents, including the police, if those persons are  
10 involved in the investigation or prosecution of the case.  
11 Therefore, the fact that the prosecution failed to look beyond  
12 the files provided by the FBI is not mere negligence; it is a  
13 reckless disregard for its Constitution obligations to learn  
14 and seek out favorable evidence. The prosecution's reliance on  
15 the FBI to provide the required information amounted to an  
16 intentional abdication of its responsibility.

17                 For example, the prosecution was aware of the  
18 existence of a camera set to provide a live feed. The claims  
19 that the FBI 302 authored by Burke on April 8th of 2014 about  
20 Egbert led the prosecution to believe that it did not need to  
21 follow up on the camera feed because the 302 report said that  
22 the camera was not configured to record. But the prosecution's  
23 decision to not follow up was not mere negligence. As the  
24 Court noted previously, the government's proffer that views  
25 from a surveillance camera were never viewed by anyone nor

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1 recorded or reported in some format was simply inconceivable.  
2 That the prosecution accepted this implausible claim, whether  
3 it was provided by the FBI, is just another example of its  
4 reckless disregard to fulfill its constitutional duties to  
5 learn about evidence favorable to the defense that may have  
6 existed as a result of someone's notes and observations of the  
7 surveillance camera's live feed of the Bundy Ranch.

8 Further, the prosecutors' alleged reliance on the  
9 information in the FBI files was misplaced. The Court finds  
10 that the FBI's failure to timely produce information to the  
11 prosecution amounts to reckless disregard or flagrant  
12 misbehavior, especially in light of the fact that the FBI was  
13 directly involved in the operation, prior to the operation,  
14 during, and after the alleged conspiracy timeline. The Court  
15 seriously questions why the FBI inexplicably placed (or perhaps  
16 hid) potentially exculpatory electronic information about the  
17 placement of FBI snipers in such an unconventional location, on  
18 a thumb drive, inside a vehicle, for over three years.  
19 Compounding the Court's concern is that the FBI had almost four  
20 full years to prepare the trial and two years to disclose the  
21 information to the prosecution and that their agents were  
22 physically present during the last two trials where the  
23 existence of snipers was contentiously debated. Regardless,  
24 the Court is not required to identify the responsible persons  
25 with such specificity. And I add, the Court is not aware of

1       any other situation where the FBI has acted in disregard such  
2       as this. The law attributes, nevertheless, the conduct,  
3       whether it's of the FBI or other enforcement -- law enforcement  
4       agencies under these circumstances, to the government  
5       prosecution team, citing *United States vs. Barrera-Moreno*  
6       decided by the Ninth Circuit in 1991, analyzing the Court's  
7       supervisory power, stating, and I quote, that "dismissal is  
8       appropriate when the investigatory or prosecutorial process has  
9       violated a federal constitutional or statutory right and no  
10      lesser remedial action is available."

11                  This case is distinguished from *Chapman* in that the  
12       prosecution in this case has kept a record of what has been  
13       produced and what has not been produced. The Court also  
14       recognizes that the government has attempted to locate all  
15       outstanding discovery. However, like *Chapman*, this case  
16       involves voluminous discovery and the government willfully  
17       failed to produce *Brady* material. Additionally, the government  
18       made several misrepresentations to the defense, and to the  
19       Court, regarding the existence of the cameras, the snipers, the  
20       materiality of prior threat assessments and its diligent and  
21       fully complying -- its diligence in fully complying with its  
22       constitutional obligations. For example, representations about  
23       whether individuals were technically "snipers" or not "snipers"  
24       was disingenuous, especially considering that the undisclosed  
25       documents authored by the FBI, the ones located on the thumb

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1       drive inside a vehicle, expressly refer to these individuals as  
2       "snipers" at least three different occasions. Likewise,  
3       arguments about whether they were actually "deployed" or merely  
4       "training" was a deliberate attempt to mislead and to obscure  
5       the truth. These are arguments for closing argument and not a  
6       reason to withhold information. Numerous other instances are  
7       noted by the defense in the brief and the Court does not  
8       disagree with these representations.

9               Thus, the Court does find that there has been  
10      flagrant prosecutorial misconduct in this case even if the  
11      documents themselves were not intentionally withheld from the  
12      defense.

13               Defendant Payne argues that the defense has been  
14      prejudiced because there -- they have already set forth the  
15      legal and factual particulars of their defense by revealing  
16      voir dire strategy, the evidence they expect to support their  
17      defense in their opening statements, revealing their strategy  
18      in cross-examination, and the defense correctly avers that this  
19      revealed information will allow the government to try and  
20      correct its faltering case. Specifically, the defense notes  
21      the lack of success of the government at prior trials; the tone  
22      and the direction of the jury questions in this case, both  
23      those questions that were read and not read to the witness; and  
24      the new yet unexplored issues related to the Wooten e-mail, the  
25      FBI special agent who was formally assigned to lead the

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1 investigation but abruptly was removed in February of 2017,  
2 allegedly by the prosecution because he complained of Special  
3 Agent in Charge Dan Love's misconduct, the investigating law  
4 enforcement officer's bias, the government's bias, and the  
5 failure to disclose exculpatory evidence.

6 The Court agrees that retrying the case would only  
7 advantage the government by allowing them to strengthen their  
8 witnesses' testimony based on the knowledge gained from the  
9 information provided by the defense and revealed thus far. The  
10 government would be able to perfect its opening statements  
11 based on the revealed defense strategy in its opening and the  
12 government would also be able to conduct more strategic voir  
13 dire at the retrial.

14 The Court is troubled by the prosecution's failure to  
15 look beyond the FBI file that was provided and construes the  
16 *Brady* violations in concert as a reckless disregard of its  
17 discovery obligations. The government's recklessness and the  
18 prejudice the defendants will suffer as a result of a retrial  
19 warrant the extreme measure of dismissing the Indictment  
20 because no lesser sanction would adequately defer -- deter  
21 future investigatory and prosecutorial misconduct.

22 The government is only proposed a new trial as the  
23 appropriate remedy for their discovery violations. However,  
24 its conduct has caused the integrity of a future trial and any  
25 resulting conviction to be even more questionable. Both the

1 defense and the community possess the right to expect a fair  
2 process with a reliable conclusion. Therefore, it is the  
3 Court's position that none of the alternative sanctions  
4 available are as certain to impress the government with the  
5 Court's resoluteness in holding prosecutors and their  
6 investigative agencies to the ethical standards which regulate  
7 the legal profession as a whole.

8 The Court finds that the government's conduct in this  
9 case was indeed outrageous, amounting to a due process  
10 violation, and that a new trial is not an adequate sanction for  
11 this due process violation.

12 Even if the government's conduct did not rise to the  
13 level of a due process violation, the Court would nonetheless  
14 dismiss under its supervisory powers because there has been  
15 flagrant misconduct, substantial prejudice, and no lesser  
16 remedy is sufficient. Dismissal is necessary as to these four  
17 defendants: Ryan Payne, Ryan Bundy, Ammon Bundy, and Cliven  
18 Bundy, and dismissal is justified for all three of the  
19 enumerated reasons provided by the law:

20 Number one, to properly remedy the constitutional  
21 violation; number two, to protect judicial integrity by  
22 ensuring that a conviction rests only on appropriate  
23 considerations validly before a jury; and number three, to  
24 deter future illegal conduct.

25 It is herein ordered that the defendants' Motion to

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22

1 Dismiss with prejudice, Number 2883, public version 3057, as  
2 well as Document No. 2906, public version 3058, and  
3 Document 3082 and 3085, public version 3087 and 3088, are  
4 hereby granted.

5 The Court hereby vacates the detention orders for  
6 Cliven Bundy. The Court vacates the pretrial release orders  
7 and exonerates the bonds of Ryan Payne, Ryan Bundy, and Ammon  
8 Bundy. Mr. Payne is still to report to the U.S. Marshal's  
9 Office immediately per Judge Brown's order from Oregon, but  
10 rather than having you remanded into custody right now  
11 immediately, I will order you to report to the U.S. Marshal's  
12 Office as soon as this hearing is concluded.

13 The Calendar Call in trial date is likewise vacated  
14 as to these four defendants, and the trial for the remaining  
15 defendants will remain scheduled for February 26th at 8:30 a.m.  
16 with Calendar Call February 15th at 9:00 a.m.

17 So the Court will take about a 15-minute recess.  
18 It's 9:56 now. So, about until 10:15 so that the proper  
19 paperwork can be provided to the defendants and then we'll  
20 resume and take up the Intervenors' Motion to Unseal, which is  
21 number 3010 on the docket.

22 COURTROOM ADMINISTRATOR: All rise.

23 Off record.

24 (Recess was taken at 9:56 a.m.)

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COURT REPORTER'S CERTIFICATE

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4 I, Heather K. Newman, Official Court Reporter, United  
5 States District Court, District of Nevada, Las Vegas, Nevada,  
6 do hereby certify that pursuant to Section 753, Title 28,  
7 United States Code, the foregoing is a true, complete, and  
8 correct transcript of the proceedings had in connection with  
9 the above-entitled matter.

10

11 DATED: 1-9-2018

/s/ Heather K. Newman  
Heather K. Newman, CCR #774  
OFFICIAL FEDERAL REPORTER

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